

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

RAHEEM NADER, M.D.,

Plaintiff,

v.

Civil Action No. 2:14-cv-24993

SYLVIA MATHEWS BURWELL,  
United States Secretary of Health and Human Services,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending are the parties' cross-motions for summary judgment. One was filed by plaintiff Raheem Nader on September 30, 2015, and the other by defendant Sylvia Mathews Burwell, Secretary of the United States Department of Health and Human Services (the "Secretary"), on October 29, 2015.

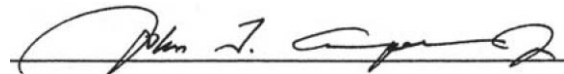
Neither party explains in its briefing regarding the timing of reopening precisely how the reopening was accomplished, including whether notice of reopening of plaintiff's Medicare claims was provided to plaintiff and, if so, how, when, and to whom such notice was addressed, together with citation to the applicable regulation(s). Defendant appears to argue that notice was provided to plaintiff. The March 17, 2008, document in the administrative record, however, to which defendant and the ALJ below refer seems not to have

been directed to plaintiff. See Administrative Record 1350. Furthermore, neither party has analyzed whether Medicare statutes or regulations require a notice of reopening in this case, including how, when, and to whom it must be directed. See, e.g., 42 C.F.R. § 405.1887(a).

Consequently, the court directs the parties to submit additional briefing regarding the notice of reopening in this matter, with record citations to the underlying documents and the applicable regulation(s). It is hereby ORDERED that defendant submit a memorandum regarding notice of reopening by December 28, 2016, of no more than ten pages; that plaintiff submit a response memorandum by January 6, 2017, of no more than ten pages; and that any reply memorandum be limited to five pages and submitted by defendant by January 11, 2017.

The Clerk is requested to transmit copies of this order to all counsel of record and any unrepresented parties.

DATED: December 15, 2016

A handwritten signature in black ink, appearing to read "John T. Copenhaver, Jr.", is written over a horizontal line.

John T. Copenhaver, Jr.  
United States District Judge